

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICIA PHILLIPS, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
PHILADELPHIA HOUSING	:	No. 00-4275
AUTHORITY, et al.,	:	
Defendants.	:	
	:	

MEMORANDUM AND ORDER

Schiller, J.

August 8, 2005

This class action lawsuit concerns Defendants’ alleged violations of the “welfare-to-work exclusion,” a federal law which requires that certain increases in household income be excluded when determining tenant rents. This Court previously approved the parties’ proposed settlement agreement. *Phillips v. Phila. Hous. Auth.*, Civ. A. No. 00-4275, 2005 WL 1025151, 2005 U.S. Dist. LEXIS 7640 (E.D. Pa. May 2, 2005). The Court’s approval, however, remained subject to an examination of Plaintiffs’ attorneys’ fees from the commencement of this litigation through September 16, 2003. (*Id.*) Plaintiffs now move to recover \$230,000.00 in fees and costs for this period of time. For the reasons that follow, Plaintiffs’ motion is granted.

I. BACKGROUND

Only the facts related to the present fee petition need be stated. Plaintiffs are current and former Philadelphia Housing Authority (“PHA”) tenants who filed this action pursuant to 42 U.S.C. § 1983. They aver that their monthly rents were incorrectly calculated when Defendants, in contravention of federal law, assessed those rents without excluding income from Plaintiffs’

employment training programs. *See* 42 U.S.C. § 1437(a), *as amended* in 1990; *see also* Quality Housing and Work Responsibility Act of 1998. Plaintiffs estimate that 3200 tenants failed to receive an Earned Income Disregard or Earned Income Disallowance (“EID”) for which they may have been eligible. *Phillips*, 2005 WL 1025151, at *1.

In August of 2004, following protracted litigation (including class certification), the parties submitted a proposed settlement agreement (the “Agreement”) to the Court for approval. (*See* Joint Mot. for Approval of Settlement Agreement Ex. 1 [hereinafter “Agreement”].) A fairness hearing was held on April 4, 2005, following which the Court approved the Agreement as fair, reasonable, and adequate. *Phillips*, 2005 WL 1025151. The Agreement sets forth a review process for determining which tenants should have received EIDs. *Id.* at *2. It requires PHA to contact members of two settlement classes, “Current Residents” and “Former Residents,” about their potential eligibility for an EID. *Id.* at *1-2. Each class member will have an opportunity for PHA to review all available, relevant documentation concerning his or her work history, rent payments, and training programs. *Id.* at *2. Using specially designed EID rent calculation forms, PHA will determine whether the Current or Former Resident has been overcharged. *Id.* If so, PHA will reimburse that individual for the amount of the overcharge, in the form of either a rent credit or a refund. *Id.* The Agreement also provides that, going forward, PHA will comply with federal EID mandates and provide EID training to all employees involved in rent calculations. (Agreement ¶¶ F, G.)

Paragraph S of the Agreement addresses the matter of attorneys’ fees. This paragraph divides the attorneys’ fees and costs incurred by Plaintiffs into two categories: (1) fees incurred from the commencement of this litigation through September 16, 2003; and (2) fees incurred from September

17, 2003 through the Effective Date of the Agreement.¹ (*Id.* ¶ S.) With respect to the latter category, Plaintiffs will submit a “supplemental petition” to the Court no later than 90 days after the Effective Date. (*Id.*) With respect to the former category, PHA has agreed to pay class counsel a flat sum of \$230,000.00, which class counsel has agreed to accept. (*Id.*) On May 2, 2005, however, Plaintiffs were directed to submit documentation in support of the \$230,000.00 figure, so that this Court could conduct an independent assessment of its reasonableness. *Phillips*, 2005 WL 1025151, at *6-7 (ordering additional documentation because class counsel fees must be reviewed by the court).

Thereafter, class counsel notified class members that they would be filing a motion for approval of the \$230,000.00 sum. (Pls.’ Mot. for Att’ys Fees Ex. E (Aff. of Ruthellen Landau on Notice).) This notice, which was sent by first class mail, postage prepaid, also included information about the supplemental petition for fees. (*Id.* Ex. E ¶¶ 1-2; *see also id.* Ex. E-1 (Notice of Claim for Att’ys Fees and Costs).) As of June 3, 2005, class counsel had returned approximately 200 calls to class members in response to the notice. (*Id.* Ex. E ¶ 4.) None of those callers expressed an objection to the request for attorneys’ fees. (*Id.*) Moreover, to date, no class member has filed written objections to the fee claim.²

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 23(h) provides that “[i]n an action certified as a class action,

¹ “Effective Date” is defined in Paragraph L of the Agreement.

² On June 13, 2005, the Court did receive a request for an extension of time to file objections from an individual named Jeffrey S. Ford. The Court granted Ford’s request and ordered him to file his objections by July 6, 2005. (Order of June 15, 2005.) Ford, however, never filed any objections.

the court may award reasonable attorneys fees and nontaxable costs authorized by law or by agreement of the parties” FED. R. CIV. P. 23(h) (2005). In general, a party requesting fees must demonstrate the reasonableness of its request by submitting evidence supporting the hours worked and rates claimed. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). In the context of class action settlements, moreover, a thorough judicial review of fee applications is required. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 819 (3d Cir. 1995); *see also Smith v. First Union Mortgage Corp.*, Civ. A. No. 98-CV-5360, 1999 WL 1081362, at *2, 1999 U.S. Dist. LEXIS 18299, at *4 (E.D. Pa. Dec. 1, 1999) (“The court has an obligation to review the reasonableness of attorney fees in class action settlements even in the absence of any objection and whether they come from a common fund or will otherwise be paid.”). As “[t]he determination of attorneys’ fees in class action settlements is fraught with the potential for a conflict of interest between the class and class counsel . . . the district court must protect the class’s interest by acting as a fiduciary for the class.” *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005) (citations omitted); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 469 (2d Cir. 1974) (stating that court should preserve integrity of Rule 23, and of legal profession, by avoiding an award of windfall fees).

III. DISCUSSION

Class counsel seeks \$230,000.00 in attorneys’ fees and costs for work performed from the commencement of the case through September 16, 2003. In their motion, which Defendants do not oppose, Plaintiffs assert that although class counsel would seek more than \$320,000.00 in fees for this time period, they have agreed to accept only \$230,000.00 as part of the settlement of this matter.

(Pls.’ Mem. of Law in Supp. of Mot. for Att’ys Fees at 2; *see also* Agreement ¶ S.) The Court will now determine the reasonableness of Plaintiffs’ request.

A. Attorneys’ Fees

1. *The Appropriate Method of Calculation*

In class actions, a court may calculate attorneys’ fees using either the lodestar method or the percentage-of-recovery method. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 333 (3d Cir. 1998). The percentage-of-recovery method awards class counsel a fixed portion of the settlement fund. This method is preferred in cases where counsel and the class share a common fund because it permits courts to grant fees “in a manner that rewards counsel for success and penalizes it for failure.” *Rite Aid Corp. Sec. Litig.*, 396 F.3d at 300 (*quoting Prudential*, 148 F.3d at 333). The lodestar method, by contrast, requires multiplying the number of hours reasonably worked by a reasonable hourly rate. *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). This method is normally applied in statutory fee shifting cases and is designed to ensure that counsel undertaking socially beneficially litigation receive an adequate fee “irrespective of the monetary value of the final relief achieved for the class.” *General Motors*, 55 F.3d at 821. The lodestar method may also be applied “in cases where the nature of the recovery does not allow the determination of the settlement’s value necessary for application of the percentage-of-recovery method.” *Prudential*, 148 F.3d at 333 (*citing General Motors*, 55 F.3d at 821). Neither method is mandatory, leaving the district court with a wide range of discretion when selecting which method to employ. *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 734 (E.D. Pa. 1995).

The Court concludes that, in this case, the lodestar method is clearly the better approach. First, because Congress has determined that parties who prevail in § 1983 actions may recover

reasonable attorneys' fees, this is a statutory fee shifting case. *See* 42 U.S.C. § 1988 (2005). Second, there is no "common fund" of money from which each class member will be awarded damages. *Cf. Lake*, 900 F. Supp. at 734 ("In situations where counsel and the class share a common fund, or where the fee and settlement are claimed to be independent of each other but actually derive from the same source, a percentage of the total recovery is more appropriate."). Instead, to recover damages, class members must apply for individual EID examinations to assess their eligibility for rent credits or refunds. The value of a tenant's rent credit or refund, if any, will depend on the amount he or she has been overcharged and will vary from tenant to tenant. This calculation will be unaffected by the award of attorneys' fees, which PHA will pay separately. (*See* Agreement ¶ S.) Third, the benefits of this settlement are hard to measure and do not allow for "the determination of the settlement's value necessary for application of the percentage-of-recovery method." *See Prudential*, 148 F.3d at 333. The Court cannot predict, at this stage, how many tenants will seek rent reimbursements and what the total value of the rent credits and refunds will be. In addition, the Agreement provides the class members with non-monetary benefits that are impossible to quantify, such as PHA's promise to comply with federal EID mandates and to provide EID training to its employees. (*See* Agreement ¶¶ F, G.)

Therefore, the Court will exercise its discretion and apply the lodestar method to Plaintiffs' request for attorneys' fees. *See, e.g., Saunders v. Berks Credit & Collections, Inc.*, Civ. A. No. 00-3477, 2002 WL 1497374, at *15-16, 2002 U.S. Dist. LEXIS 12718, at *42-46 (E.D. Pa. July 11, 2002) (finding lodestar method best for assessing attorneys' fees in class action settlement, and calculating fees under this method alone).

2. *The Lodestar*

To calculate the lodestar, the Court must multiply the number of hours reasonably worked by Plaintiffs' counsel by a reasonable hourly rate. *See Maldonado*, 256 F.3d at 184. "The result of this lodestar is strongly presumed to yield a reasonable fee." *Saunders*, 2002 WL 1497374, at *15 (citing *Washington v. Phila. County Ct. of Common Pleas*, 89 F.3d 1031, 1035 (3d Cir. 1996)). Plaintiffs have produced detailed billing records and affidavits that support a lodestar of \$326,346.50, a figure well above their requested amount.

a. Hours Expended

When determining the hours reasonably expended, a court should review the time charged and exclude hours that are "excessive, redundant, or otherwise unnecessary." *Maldonado*, 256 F.3d at 184 (citation and quotation omitted). Hours that have been inadequately documented may also be deducted. *Hensley*, 461 U.S. at 433. Here, class counsel have submitted detailed time and activities schedules, which contain computer entries made contemporaneously with the work performed. (See Pls.' Mot. for Att'ys Fees Ex. A2 (Donahue Schedule), Ex. A3 (Mitchell & Field Schedules), Ex. C1 (Gould Schedule), Ex. D1 (Landau Schedule).) Each schedule lists, in chronological order, the tasks performed by the particular attorney and the amount of time devoted to these tasks. (*Id.*) The schedules show that, from the commencement of this action through September 16, 2003, class counsel expended a total of 1086.50 hours litigating this matter. (*Id.*) The Court finds that these hours have been sufficiently documented and further holds that they were not excessive, redundant, or otherwise unnecessary, particularly given the complexity of the issues in this case and its litigious history.

Accordingly, all hours submitted by class counsel will be used for the lodestar calculation.

b. Hourly Rates

Having determined the number of hours to be used for the lodestar, the Court must now examine whether the requested hourly rates are reasonable. *See Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). Even when a plaintiff is represented by non-profit counsel, the reasonable hourly rate is to be calculated according to the prevailing or current market rates in the relevant community.³ *Blum v. Stenson*, 465 U.S. 886, 895 (1984). This inquiry involves comparing the experience and skill of the fee petitioner’s attorneys with lawyers of reasonably comparable skill, experience, and reputation. *Rode*, 892 F.2d at 1183 (citations omitted). Courts in this District frequently look to the Community Legal Services, Inc.’s fee schedule (“CLS fee schedule”) as a fair reflection of prevailing market rates. *Maldonado*, 256 F.3d at 187 (describing CLS fee schedule with approval); *see also Rainey v. Phila. Hous. Auth.*, 832 F. Supp. 127, 129 (E.D. Pa. 1993) (“The CLS fee schedule has been approvingly cited by the Third Circuit as being well developed and has been found by this Court to be a fair reflection of the prevailing market rates in Philadelphia.”) (citation omitted).

The majority of Plaintiffs’ legal work was performed by Michael Donahue, an eighteen-year veteran of Community Legal Services. (Pls.’ Mot. for Att’ys Fees Ex. A (Aff. of Michael Donahue) ¶ 1.) He has extensive litigation experience in federal court and has prevailed in twelve class actions. (*Id.* Ex. A ¶ 5.) Moreover, he has successfully prosecuted approximately 300 cases involving the federal housing regulations. (*Id.* Ex. A ¶ 6.) Based on the most recent CLS fee schedule, issued in

³ The Court will thus look at the current market rates of class counsel, despite the fact that this case dates back to the year 2000. *See Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001) (“When attorneys’ fees are awarded, the current market rate must be used. The current market rate is the rate at the time of the fee petition, not the rate at the time the services were performed.”).

November of 2003, Community Legal Services has established Mr. Donahue's hourly billing rate at \$300.00 per hour. (*Id.* Ex. A ¶ 9; *see also id.* Ex. B5 (Memo to Donahue Setting Hourly Rate).) The Court finds this rate reasonable, not only because it derives from the CLS fee schedule, but also because it reflects Mr. Donahue's excellent record of skill and experience.

Substantial additional work was completed by two other attorneys at Community Legal Services, George Gould and Ruthellen Landau. Mr. Gould has been both a member of the Pennsylvania State Bar and an employee at Community Legal Services since 1970. (*Id.* Ex. C (Decl. of George G. Gould) ¶¶ 1-3.) For the past thirty-five years, he has specialized in the area of housing programs and has litigated numerous class actions concerning the rights of plaintiffs in such programs. (*Id.* Ex. C ¶¶ 3-4.) Ms. Landau has been employed by Community Legal Services since September of 1998. (*Id.* Ex. D (Aff. of Ruthellen Landau) ¶ 1.) All of her cases have been in the public housing unit, and she has litigated approximately sixty federal matters. (*Id.* Ex. D ¶¶ 2-3.) Community Legal Services has set Mr. Gould's rate at \$400.00 per hour and Ms. Landau's rate at \$200.00 per hour. (*Id.* Ex. C ¶ 9, Ex. D ¶ 5; *see also id.* Ex. B6 (Memo to Gould Setting Hourly Rate), Ex. B7 (Memo to Landau Setting Hourly Rate).) These rates are commensurate with the CLS fee schedule and the relative experience of these attorneys. Therefore, the Court finds them reasonable.

Lastly, law students from the University of Pennsylvania Law School performed several hours of legal work. Plaintiffs categorize these expenses as "costs." (*Id.* Ex. A ¶ 13(e).) The Court, however, will classify them as "fees," following the lead of the courts in this District which have chosen to value work by a law student on a reasonable per hour basis. *See, e.g., Dorfman v. First Boston Corp.*, 70 F.R.D. 366, 374 (E.D. Pa. 1976). This approach is consistent with the CLS fee

schedule, which includes a category for law students. (Pls.' Mot. for Att'ys Fees Ex. B2 (CLS Fee Schedule Effective November of 2003).) Class counsel's time and activity sheets show that two law students spent a collective 18.70 hours conducting research in this matter. (*Id.* Ex. A3.) Class counsel attribute \$1776.50 in costs to this research. (*Id.* Ex. A ¶ 13(e).) Dividing the \$1776.50 in costs by the 18.7 hours expended results in a law student rate of \$95.00 per hour. This rate is reasonable, as it falls exactly at the midpoint of the range proposed by the most recent CLS fee schedule. (*Id.* Ex. B2 (suggesting that an appropriate rate for law students is between \$70.00 and \$120.00 per hour).)

Accordingly, the Court finds no grounds to reduce any of the hourly rates charged in this matter.

c. Hours Multiplied by Rates

Multiplying the hours submitted by class counsel by the reasonable hourly rates charged, the Court arrives at a lodestar of \$326,346.50. This figure is the sum of \$195,090.00 for Mr. Donahue (650.30 hours at \$300.00 per hour), \$91,960.00 for Mr. Gould (229.90 hours at \$400.00 per hour), \$37,520.00 for Ms. Landau (187.60 hours at \$200.00 per hour), and \$1776.50 for the two law students (18.7 hours at \$95.00 per hour). Although the amount of \$326,346.50 is a reasonable figure, class counsel will be awarded less because they have agreed to accept less as part of the settlement. *See Saunders*, 2002 WL 1497374, at *15 (stating that the result of the lodestar "is strongly presumed to yield a reasonable fee," but awarding less than the lodestar in light of class counsel's voluntary reductions to that amount).

B. Costs

Plaintiffs are also entitled to recover costs incurred in this litigation. (Agreement ¶ S); *see*

also FED. R. CIV. P. 23(h) (stating that the court may award “nontaxable costs authorized by law or by agreement of the parties”). According to Mr. Donahue, Plaintiffs incurred the following costs from the commencement of this case through September 16, 2003: (1) \$150.00 for the filing fee; (2) \$699.30 for the deposition of Mr. Wood, the PHA employee who designed the computer program to identify Current and Former Residents; (3) \$437.50 for Bernard Siskin, who was retained as a possible expert statistician witness; (4) \$400.00 for Nick Wright, who designed a computer database to capture information from class members who called in response to the Rule 23(c)(2) notice; and (5) \$1,700.00 for summer students, who assisted in handling calls from class members and entering information into the computer data base pursuant to the Rule 23(c)(2) notice. These expenses total \$3,386.80.

The Court finds all of the aforementioned costs reasonable. “[W]itness fees and the costs associated with expert witnesses and consultants are often deemed incidental to litigation.” *Yong Soon Oh v. AT&T Corp.*, 225 F.R.D. 142, 154 (D.N.J. 2004) (citation omitted). “Computer-assisted research is also essential to modern complex litigation.” *Id.* (citation omitted). For this matter, in particular, identifying class members and managing their information could not have been an easy task, given the sheer number of tenants at issue. *See Phillips*, 2005 WL 1025151, at *1 (“Plaintiffs estimate that 700 former PHA tenants and 2,500 current PHA tenants failed to receive an [EID] for which they may have been eligible.”). Therefore, the Court makes no deductions to the \$3,386.80 figure set forth by Mr. Donahue.

IV. CONCLUSION

For the reasons stated above, the Court finds that, from the commencement of this litigation

through September 16, 2003, Plaintiffs incurred reasonable attorneys' fees in the amount of \$326,346.50 and reasonable costs in the amount of \$3,386.80. Therefore, Plaintiffs have amply defended their request for \$230,000.00 in attorneys' fees and costs for this time period and, accordingly, their motion is granted.

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Plaintiffs,	:	
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v.	:	
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PHILADELPHIA HOUSING	:	No. 00-4275
AUTHORITY, et al.,	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 8th day of **August, 2005**, upon consideration of Plaintiffs' Motion for Attorneys' Fees (Document No. 222) and Defendants' response thereto (Document No. 228), and for the foregoing reasons, it is hereby **ORDERED** that Plaintiffs' Motion is **GRANTED** as follows:

1. Plaintiffs are awarded \$230,000.00 in attorneys' fees and costs for work performed in this matter from the commencement of the case through September 16, 2003.
2. Defendants shall pay Plaintiffs this sum within three days of the date on which this Order becomes final and non-appealable.

BY THE COURT:

Berle M. Schiller, J.